

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

IN RE: )  
 )  
RED TOP RENTALS, INC. ) CAUSE NO: 09-05229-JKC-11  
 )  
 )  
DEBTOR. )  
 )  
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**MOTION TO REJECT UNEXPIRED LEASE  
WITH MARLIN LEASING**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Red Top Rentals, Inc., the debtor and debtor-in-possession (the “Debtor”), by counsel, in support of the above-entitled motion (this “Motion”), and respectfully states:

1. Since the Petition Date, the Debtor has continued in the possession of their property pursuant to §§ 1107 and 1108 of the Bankruptcy Code, codified at 11 U.S.C. §101, *et seq.* (the “Code”), and is a debtor-in-possession. A creditors committee has not been appointed in this case.

2. The Court has jurisdiction over this application pursuant to 28 U.S.C. §157 and 1334. Venue is proper pursuant to 28 U.S.C. §1408 and 1409. This application is a core proceeding pursuant to 28 U.S.C. §157(b)(2). The statutory predicates for the relief requested herein are 11 U.S.C. §365 and Fed. R. Bankr. P. 6006.

3. Prior to the Petition Date, the Debtor, in its normal course of business, entered into a lease agreement with Marlin Leasing (the “Lease”). Attached as **Attachment A** is a copy of the Lease.

4. The Lease is for the lease of a Konica 7222 digital copier and a Sharp 525 facsimile. The Lease appears to be still be executory and appears to expire on or around July 19, 2009.

5. Assignment of the Lease is not deemed by the Debtor to have any value.

6. The Debtor has no further need to lease the fax machine. The Debtor is keeping another copier, which includes a facsimile, for a total rental price of \$320.00 per month. The contract for the lease of the Konia 7222 digital copier and Sharp 525 facsimile does not include a copier machine and costs approximately \$265.00 per month in rent. The Lease is a burden on the Debtor and is not a source of potential value for this estate.

7. Section 365(a) of the Bankruptcy Code provides that a debtor-in-possession, “subject to the court’s approval, [may] assume or reject any executory contract or unexpired lease.” See In re FBI Distribution Corp., 330 F.3d 36, 42 (1<sup>st</sup> Cir. 2003); University Medical Center v. Sullivan (In re University Medical Center), 973 F.2d 1065, 1075 (3d Cir. 1992). The assumption or rejection of an unexpired lease by a debtor is subject to review under the business judgment standard. In the Matter of Federated Dept. Stores, Inc., 131 B.R. 808, 811 (S.D. Ohio 1991) (“Courts traditionally have applied the business judgment standard in determining whether to authorize the rejection of executory contracts and unexpired leases.”). This standard is satisfied when the debtor determines that rejection will benefit the estate. Commercial Fin., Ltd. v. Hawaii Dimensions, Inc. (In re Hawaii Dimensions, Inc.), 47 B.R. 425, 427 (D. Haw. 1985) (“Under the business judgment test, a court should approve a debtor’s proposed rejection if such rejection will benefit the estate.”) (citation omitted).

8. If the debtor’s business judgment has been reasonably exercised, a court should approve the assumption or rejection of an unexpired lease. See, e.g., NLRB v. Bildisco and

Bildisco, 465 U.S. 513, 523 (1984); Group of Institutional Investors v. Chicago, M., St. P. & P.R. Co., 318 U.S. 523, 550 (1943); Sharon Steel Corp. v. National Fuel Gas Distribution Corp., 872 F.2d 36, 39-40 (3d Cir. 1989); In the Matter of Goldblatt Bros., Inc., 766 F.2d 1136, 1139 (7<sup>th</sup> Cir. 1985).

9. In applying the “business judgment” standard, courts show great deference to the debtor’s decision to reject. See Summit Land Co. v. Allen (In re Summit Land Co.), 13 B.R. 310, 315 (Bankr. D. Utah 1981) (absent extraordinary circumstances, court approval of a debtor’s decision to assume or reject an executory contract “should be granted as a matter of course”).

10. The Debtor clearly satisfies the “business judgment” standard in rejecting the Lease. As explained above, the Lease is not a source of potential value for the estate. Accordingly, the Debtor has determined that, in the sound exercise of their business judgment, the Lease should be rejected and such rejection will benefit the Debtor’s estates.

### **Request for Relief**

The Debtor respectfully requests that the Court grant this Motion and grant such other and further relief as is just and proper.

Respectfully submitted,

**TUCKER | HESTER, LLC**

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